In the

SUPREME COURT of the UNITED STATES

October Term, 1967

No. 187

THE MENOMINEE TRIBE OF INDIANS, et al.

v.

THE UNITED STATES

BRIEF OF THE STATE OF WISCONSIN, AMICUS CURIAE

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INTEREST OF THE AMICUS CURIAE

The decision of the Court of Claims is in direct opposition to the holding of the Wisconsin Supreme Court in *State v. Sanapaw* (1963), 21 Wis. (2d) 377, 124 N. W. (2d) 41, cert. den. 377 U. S. 991. In that case it was held that the exclusive hunting and fishing rights granted to the Menominee Indians by the Wolf River Treaty of 1854 (10 Stat. 1964) were abrogated by the so-called "Termination Act" (25 U. S. C. secs. 891-902).

The Menominees commenced an action in the United States Court of Claims to recover compensation from the federal government for the taking of these rights. In granting the government's motion for summary judgment and

dismissing the petition, the court held that the treaty rights referred to above were not abrogated by the Termination Act. In the course of its opinion, the court intimated that if these rights have been interfered with, it is due to the action of the State of Wisconsin acting through its supreme court and law enforcement officials. As a result of this opinion, and its threat of liability, the State of Wisconsin has a keen interest in the resolution of the issues before this court, and disagrees wholeheartedly with the lower court's opinion in this respect. The Wisconsin Supreme Court, following the mandate of a federal law which, we submit, is clear in its abrogation of Menominee hunting and fishing rights, cannot in any way subject the state to liability.

In addition, the State of Wisconsin, as the traditional home of the Menominee people, has a clear interest in a final determination of the question of the efficacy of its fish and game laws within the borders of the former Menominee Indian Reservation which, since the Termination Act, has been a duly organized Wisconsin county.

It is our conviction that the treaty rights of the Menominees were indeed cut off by Congress and that the United States is fully and solely liable therefor.

SUMMARY OF ARGUMENT

The Wolf River Treaty of 1854 granted to the Menominees an unqualified right to hunt and fish their lands, free from all outside regulation. Thus, these rights are not derived from aboriginal user, but from a formal treaty with the United States.

Congress has always had plenary power to deal with Indians, and may pass laws in conflict with treaties made with Indians just as Congress may pass laws in conflict with treaties made with foreign nations. Thus, Congress the power to abrogate Indian privileges and rights, including treaty rights, by statute.

The Menominee "Termination Act," Public Law 399, 83rd Congress, terminates federal trusteeship over the Menominee Indians and their lands, which formerly comprised the Menominee Indian Reservation. The Act also provides that the laws of the several states are applicable to the Menominee Indians in the same manner that such laws are applicable to other citizens within the states. The Act contains no reservation of hunting and fishing rights or privileges in favor of the Indians. Thus, the Act had the effect of abrogating these rights.

The legislative history of the Termination Act does not support an interpretation contrary to the plain and ordinary meaning of the words.

First, the legislative history shows that Congress was advised that the language of the Act would extinguish the hunting and fishing rights, yet Congress made no express reservation preserving such rights.

Secondly, the contemporaneous enactment of Public Law 280 does not indicate any legislative intent as to the preservation of hunting and fishing rights under the Termination Act. Nor does the reference to Public Law 280 in the Termination Plan lead to any similar inference. Rather, it leads to the inference that Congress intended state law regarding the management of fish and wildlife

was to apply in the same manner that state law regarding the maintenance of law and order was to apply.

The abrogation of exclusive hunting and fishing rights under the Termination Act constitutes a loss of valuable property rights, and is compensable by the federal government.

ARGUMENT

I. THE MENOMINEE INDIAN TERMINATION ACT (P. L. 399, 83rd CONG), BY ITS PLAIN LANGUAGE, ABROGATED THE EXCLUSIVE HUNTING AND FISHING RIGHTS OF THE MENOMINEE INDIANS WHICH WERE GRANTED TO THEM BY THE WOLF RIVER TREATY OF 1854.

A. *The hunting and fishing rights of the Menominee Indians arose from treaties with the United States.*

The treaty of May 12, 1954, known as the treaty of Wolf River, created the Menominee Indian Reservation through a cession of certain lands to the Menominees "to be held as Indian lands are held." 10 Stat. 1064. Both the Wisconsin Supreme Court, and the United States Court of Claims in the decision now under review, held that the language of the 1854 treaty granted to the Menominees an unqualified right to hunt and fish their lands free from all outside regulation and control. *State v. Sanapaw* (1963), 21 Wis. (2d) 377, 383, 124 N. W. (2d) 41; *Menominee Tribe v. United States* (1967), — Ct. Cl. —, — Fed. (2d) —.* See also *Menominee Tribe v. United*

*No reported decision of the court below being available to the amicus curiae, all page references to the Court of Claims opinion will be the printed decision, dated April 14, 1967.

States (1941), 95 Ct. Cl. 232, 240-241; *Moore v. United States* (9th Circ. 1946), 157 F. (2d) 760, cert. den. 330 U. S. 827.

Thus, the rights of the Menominees in this respect do not derive from aboriginal user, but from a formal treaty with the United States government.

B. *Congress has plenary power to deal with the Indians and may abrogate Indian privileges and rights, including treaty rights, by statute.*

The extent to which tribal Indians should be emancipated from their status as wards of the Federal Government is a matter which rests entirely within the discretion of Congress. *Lone Wolf v. Hitchcock* (1903), 187 U. S. 553, 565-567; *United States v. Waller* (1917), 243 U. S. 452, 459-460. The power to make treaties with Indian tribes was abolished in 1871 (16 Stat. 544, 566; 25 U. S. C. sec. 71), and the United States now deals with Indians by statute.

Congress has plenary power to deal with Indians and may abrogate Indian privileges and rights, including treaty rights, by statute. *Super et al. v. Work* (CCA, D. C., 1925), 3 F. (2d) 90, affirmed per curiam, 271 U. S. 643. The power of Congress over Indian tribes and tribal property cannot be limited by treaty so as to bar repeal or amendment by later statute. *Ward v. Race Horse* (1896), 163 U. S. 504; *Lone Wolf v. Hitchcock* (1903), 187 U. S. 553, 565-567; *United States v. Waller* (1917), 243 U. S. 452; *Anderson v. Gladden* (CCA 9th, 1961), 293 F. (2d)

463, Cert. denied 368 U. S. 949. See also, *Cain v. First Nat. Bank of Oregon* (9th Cir. 1963), 324 F. (2d) 532.

In *Lone Wolf v. Hitchcock, supra,* this court stated (187 U. S. at pp. 565-566):

> "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued by dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, *Chinese Exclusion Case,* 130 U. S. 581, 600, the legislative power might pass laws in conflict with treaties made with the Indians. *Thomas v. Gay,* 169 U. S. 264, 270; *Ward v. Race Horse,* 163 U. S. 504, 511; *Spalding v. Chandler,* 160 U. S. 394, 405; *Missouri, Kansas & Texas Ry. Co. v. Roberts,* 152 U. S. 114, 117; *The Cherokee Tobacco,* 11 Wall. 616.
>
> "The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. * * *"

See also *Chemah v. Fodder* (D. C., W. D. Okla., 1966), 259 F. Supp. 910, 914.

While it is submitted that the foregoing establishes the power of Congress to abrogate Indian privileges and rights, including treaty rights, by statute and to terminate the status of Indians and Indian tribes as wards of the Federal Government, it is of interest to note that a subsequent Menominee Indian Treaty executed on February 11, 1856 (11 Stat. 679), provides in part as follows:

> "ARTICLE 3. To promote the welfare and the improvement of the said Menomonees, and friendly relations between them and the citizens of the United States, it is further stipulated—
>
> "1. That in this agreement and the treaties made previously with the Menomonees should prove insufficient, from causes which cannot now been (be) foreseen, to effect the said objects, the President of the United States may, by and with the advice and consent of the Senate, adopt such policy in the management of the affairs of the Menomonees as in his judgment may be most beneficial to them; or Congress may, hereafter, make such provision by law, as experience shall prove to be necessary."

C. *The Menominee "Termination Act" specifically provides that following termination all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the Menominee Indians, and that the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.*

In 1954 Congress provided for the termination of all federal supervision and control over the Menominee Indian Tribe and the Menominee Indian Reservation by Public Law 399, 83rd Congress, popularly known as the "Termination Act" (68 Stat. 250, as amended, 70 Stat. 544, 70 Stat. 549, 72 Stat. 290, 74 Stat. 867; 25 U. S. C. secs. 891-902). On April 29, 1961, the Secretary of the Interior proclaimed the transfer, pursuant to sec. 8 of the Termination Act, of all tribal property held in trust by the United States Government, and the termination of all federal supervision and control over the Menominee Indians and the Menominee Indian Reservation effective midnight April 30, 1961 (26 Fed. Reg., No. 82, April 29, 1961, at page 3726). Upon publication of the plan in the Federal Register in connection with the cited proclamation by the Secretary of the Interior, Ch. 259, Wis. Laws 1959, became effective, and what was formerly the Menominee Indian Reservation became Wisconsin's 72nd county (Wis. Laws 1959, Ch. 259, sec. 42).

The Termination Act (25 U. S. C. secs. 891-902) provides in pertinent part as follows:

§ 891. The purpose of sections 891-902 of this title is to provide for orderly *termination* of Federal super-

vision over the *property and members* of the Menominee Indian Tribe of Wisconsin.

"§ 896. The tribe shall as soon as possible and in no event later than February 1, 1959, formulate and submit to the Secretary a plan for the future control of the tribal property and service functions now conducted by or under the supervision of the United States, including but not limited to services in the fields of health, education, welfare, credit, roads, and law and order, and for all other matters involved in the withdrawal of Federal supervision. * * * The responsibility of the United States to furnish all such supervision and services to the tribe and to the members thereof, because of their status as Indians, shall cease on April 30, 1961, or on such earlier date as may be agreed upon by the tribe and the Secretary. *The plan shall contain provision* for protection of the forest on a sustained yield basis and *for the protection* of the water, soil, *fish and wildlife.* * * *

§ 899. When title to the property of the tribe has been transferred, as provided in section 897 of this title, the Secretary shall publish in the Federal Register an appropriate proclamation of that fact. Thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, *all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.* Nothing in sections 891-902 of this title shall affect the status of the members of the tribe as citizens of the United States." (Emphasis added.)

The intent of Congress in passing the "Termination Act" was to terminate federal trusteeship over the Menominee Indians, to abolish the Menominee Indian Reservation, and to make the laws of the several States applicable to the Menominee Indians in the same manner that such laws are applicable to other citizens within the states. This is evident not only from the face of the Termination Act itself, but from *House Concurrent Resolution* 108 (67 Stat. B132, 83rd Congress, First Session) which declares as follows in part:

> "Whereas it is the policy of Congress, as rapidly as possible, *to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States,* to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it
>
> "Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: . . . the Menominee Tribe of Wisconsin . . ." (Emphasis added.)

The Act contains no reservation of hunting rights or privileges in favor of the Indians. The Indian reservation has been abolished, (Cf. *Organized Village of Kake v. Egan* (1962), 369 U. S. 60, 74) and the status of the Menominee Indians and the Menominee Indian Tribe as wards of the Federal Government has been ended.

In 26 Federal Register, No. 82, April 29, 1961 at page 3726, the Secretary of the Interior proclaimed the transfer of title to all property real and personal held in trust by the United States for the Menominee Indian Tribe, as follows:

> "Pursuant to the authority contained in section 10 of the Act of June 17, 1954 (Public Law 83-399; 68 Stat. 250), it is hereby proclaimed that the title to all property, real and personal, held in trust by the United States for the Menominee Tribe has been transferred in accordance with section 8 of the Act of June 17, 1954, *supra*, and that effective midnight April 30, 1961, individual members of the Menominee Tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians; all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the Menominee Tribe; and the laws of the several States shall apply to the Menominee Tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.
>
> "As required by section 7 of the Act of June 17, 1954, *supra*, the Plan for the Future Control of Menominee Indian Tribal Property and Future Service Functions is published and appears immediately below this notice."

Thus, through the Termination Act, the United States has divested itself of all right, title and interest to the lands which comprise what was formerly the Menominee Indian Reservation, and has ended its trusteeship over the lands. Title to the forest land is now held by Menominee Enterprises, Inc., a private Wisconsin stock corporation. Title to certain parcels of land has been conveyed by the corporation to individuals for homesites. What was formerly the reservation is now Wisconsin's 72nd county, governed by a Wisconsin County Board and a Town Board. (Wis. Laws, 1959, Ch. 259.) The entire land area is now on the tax rolls. Enrolled members of the Tribe are residents of the town and county, are subject to the State's tax laws, and elect town and country officers (Wis. Laws, 1959, Ch. 259).

Thus, the effect of the Termination Act has been to abolish the federal trusteeship over the person and property the Menominees. Wise or unwise, it is an accomplished fact, and in its accomplishment Congress abrogated the exclusive hunting and fishing of the Menominees which had been secured to them by the Treaty of 1854.

II. THE LEGISLATIVE HISTORY OF THE TERMINATION ACT DOES NOT CHANGE THE IMPORT OF THE LANGUAGE THEREOF, WHICH GIVEN ITS PLAIN AND ORDINARY MEANING, WOULD EXTINGUISH THE MENOMINEES' PRE-EXISTING HUNTING AND FISHING RIGHTS.

A. *Pertinent Documents reveal congressional awareness of the fact that the language of the Termination Act would abrogate these rights.*

Sec. 891 of the Termination Act provides that the purpose "is to provide for orderly termination of Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin." Sec. 899 of the act provides that upon the Secretary of the Interior's publishing a proclamation in the Federal Register that all tribal property has been transferred in accordance with the act, "all statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and *the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.*" (Italics supplied.)

The italicized statutory language, given its plain and ordinary meaning, would subject the Menominees' preexisting exclusive hunting rights to the state's game laws. However, the court below felt that the legislative history surrounding the enactment of the Termination Act precludes such an interpretation because it shows that this was not the intent of the Congress.

The original bill, which was finally enacted by the 83d Congress in 1954 as the Termination Act, originated

in the House of Representatives as H. R. 2828. Two other companion bills to provide for the withdrawal of the Menominee Tribe from federal jurisdiction were also introduced, the one in the Senate being S. 2813, and the one in the House of Representatives being H. R. 7135. Joint hearings on all three bills were held before subcommittee of the Committee on Interior and Insular Affairs of the Senate and the subcommittee of the Committee on Interior and Insular Affairs of the House of Representatives on March 10, 11, and 12, 1954. Both S. 2813 and H. R. 7135 contained express provisions which preserved any special hunting and fishing rights the Menominees might have by treaty, statute, custom, or judicial decision. H. R 2828 contained no such corresponding provision.

The court below referred to the testimony of two witnesses appearing before the house committee who expressed their opinion that H. R. 2828's silence on the subject would not affect hunting and fishing rights acquired by treaty, but only those acquired by statute (opinion, p. 8). It should be noted, however, that neither witness mentioned the provision of H. R. 2828 (now sec. 899 of the Act) stating that: *"the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction."* (Italics supplied.) See "Joint hearings Before the Subcommittee of the Committees on Interior and Insular Affairs, Congress of the United States, Eighty-Third Congress, Second Session on S. 2813, H. R. 2828 and H. R. 7135." (Hereafter referred to as "Joint Hearings.")

It is also the fact, barely alluded to by the court below, that the *general counsel* for the then Menominee

Tribe, Mr. Glen Wilkinson, filed a memorandum with joint Senate House hearings on the termination bills, testified at the hearings, and in both his memorandum and testimony he specifically disagreed with the other witnesses, and stated that H. R. 2828 would, by its silence, abrogate Indian hunting and fishing rights.

In his memorandum, Mr. Wilkinson stated in part (Joint Hearings, pp. 697, 704):

> "On page 4 (item 7) the statement is made that 'H. R. 2828 contains no provision on this subject. It does not purport to affect any treaty rights the Indians may have.' Whether it 'purports' to affect such treaty rights seems immaterial; the fact is that it does, at least by implication, abolish the tribal rights to exclusive hunting and fishing privileges within the reservation—rights which were solemnly assured to the tribe in perpetuity."

Mr. Wilkinson testified, in part:

> "I just want to comment briefly on a few points included in the Department's report of March 5. As I have already noted, I think they have a good point respecting section 3. On page 4, item 7 of that report, the statement is made that H. R. 2828 contains no provision on this subject. It goes on to say that it does not purport to affect any treaty rights the Indians may have.
>
> "I have already covered this somewhat, *but in my judgment* I think it is clear that it does affect those treaty rights and that *those treaties are abrogated. Certainly it abolishes the tribal right to exclusive hunting and fishing privileges, because automatically upon the final termination date, the Menominee Reservation so far as hunting and fishing is*

concerned, would become subject to the laws of Wisconsin." (Joint Hearings, p. 708, Emphasis added.)

Thus advised by the General Counsel for the tribe, and with an alternative bill before it which would have expressly reserved hunting and fishing rights (H. R. 7135), Congress enacted the bill which was silent to such rights. From this it is clear that Congress did not intend to preserve hunting privileges in favor of the Indians following termination. The court below, while not discussing this testimony, disagreed for two reasons: (1) the subsequent passage of Public Law 280; and (2) the reference to Public Law 280 contained in one portion of the termination plan.

B. *The enactment of Public Law 280 does not justify the court's interpretation of the Termination Act as preserving the hunting and fishing rights of the Menominees.*

The Termination Act was passed on June 17, 1954 (P. L. 399, 83rd Congress—68 Stat. 250). A few months later, Congress extended the provisions of P. L. 280 to the Menominee Indian Reservation (P. L. 661, 83rd Congress, 2nd session, August 24, 1954, 68 Stat. 795). Public Law 280, as amended, conferred civil and criminal jurisdiction over the Menominee Indian Reservation upon the state, and *expressly reserved* to the United States jurisdiction over hunting and fishing, water, and certain property rights. Public Law 280 (18 U. S. C., sec. 1162, 28 U. S. C., sec. 1360), provides in part as follows:

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

* * *

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian of any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

* * *

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of

general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

* * *

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance of custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

The court of Claims, in the decision under review, stated (p. 10):

"It is logical to assume that the Congress, acting through its committees . . . . as well as by its own action as a whole, knew that hunting and fishing rights were being protected in Public Law 280 and there was no need to mention them in the Termination Act."

The court has given no evidence even hinting such a legislative state of mind, and we have been unable to find any such suggestion in the hearing reports and other documents bearing upon the Termination Act—which is, after all, the legislation being interpreted by the court.

It is submitted that this type of speculation is insufficient to overcome the plain language of the Termination Act, buttressed by the inescapable fact that the tribe's general counsel made it clear to the committee considering the bill that, in his opinion, failure to specifically reserve these rights would result in their abrogation. With this advice, and with an alternative bill before it which would have expressly reserved hunting and fishing rights (H. R. 7135), Congress enacted the "silent" version of the bill. It follows that Congress had no intention to reserve these rights to the Menominees following termination.

C. *The Reference to Public Law 280 in one portion of the Termination Plan does not require the construction of the Termination Act adopted by the Court below.*

As indicated above, the Termination Act required the Tribe to prepare a plan which, when approved and proclaimed by the Secretary of the Interior, would effectuate the termination. The court below quoted from sec. 7 of the Act requiring the plan to provide for protection of the forest, water, soil, fish and wildlife. 25 U. S. C. § 896. The court then quoted certain language from the plan as submitted mentioning that federal jurisdiction over the Menominee Reservation had been surrendered by the

United States by Public Law 280. The text, as quoted by the court, reads as follows (p. 11):

> "It is unnecessary, aside from amendment of Wisconsin laws to accord with existing judicial machinery, to provide specific plans for future handling of law and order, federal jurisdiction over the Menominee Reservation having been surrendered by the United States by Public Law 280, 83d Congress, as amended (18 U. S. C. 1162)."

It is clear from this excerpt, as well as from the court's own language, that the quoted portion of the plan pertains to "law and order"—it does not refer to hunting and fishing rights. It is merely the fulfillment of another portion of sec. 7 of the Termination Act which provides as follows (25 U. S. C. sec. 896):

> "The tribe shall as soon as possible and in no event later than February 1, 1959, formulate and submit to the Secretary a plan for the future control of the tribal property and service functions now conducted by or under the supervision of the United States, including but not limited to services in the fields of health, education, welfare, credit, roads, and law and order, and for all other matters involved in the withdrawal of Federal supervision."

It cannot be said that, by referring to Public Law 280 in connection with a specific requirement dealing with "law and order," the provisions thereof are incorporated into another portion of the plan pertaining to the protection of forests, soil, water, fish and wildlife. The legislative requirements for inclusion of these items in the plan appear in different portions of sec. 7 of the Act.

Even if the chain of inferences may be so extended, it furnishes no basis for declaring the intent of Congress, in passing the Termination Act, to "protect and preserve" rights which the plain language of the act abrogates.

There is another, far more tenable, inference that may be drawn from all this, and that is the inference that Congress, in abrogating the exclusive and unrestricted hunting and fishing rights of the Indians, intended that state law should apply and that the plan itself, which was submitted to the Secretary of the Interior for approval, should reflect the adequacy of the state law to protect fish and wildlife. This conclusion is supported by the fact that the Termination Act also required that the plan provide for ". . . protection of the forest on a sustained yield basis . . . ," and authorized the Secretary of the Interior to accept the tribe's plan provided that he found ". . . that it conforms to applicable Federal and State law" (25 U. S. C. 896). Significantly, the plan itself provides for protection of the forest on a sustained yield basis, as required by 25 U. S. C. sec. 896, and state legislation for that specific purpose was enacted (Wis Laws 1959, ch. 258; see *Plan for the Future Control of Menominee Indian Tribal Property and Future Service Functions,* 26 Fed. Reg. No. 82, April 29, 1961, p. 3727 et seq.). The plan, on the other hand, contains no express provision for the protection of fish and wildlife. It is therefore fair to conclude that, in view of the abrogation of the Indian's rights in this area, a separate provision for protection of fish and wildlife was unnecessary since such protection would be provided by the application of Wisconsin's conservation laws to the land and its people.

It should also be noted that the Wisconsin Supreme Court was apprised of the contemporaneous passage of Public Law 280 in *State v. Sanapaw* (1963), 21 Wis. (2d) 377, 124 N. W. (2d) 41, cert. den. 377 U. S. 991. The brief filed by the State of Wisconsin in opposition to a motion for rehearing in that case devoted 3-5 pages to a discussion of P. L. 280, and quoted extensively from its text.

III. TREATY HUNTING AND FISHING RIGHTS CONSTITUTE VALUABLE PROPERTY, AND THEIR LOSS IS COMPENSABLE.

Since this question will be discussed by the claimants, the Menominee Tribe, et al., the State of Wisconsin, as *amicus curiae,* will do no more than state its contention that the exclusive hunting and fishing rights held by the Menominees under the provisions of the Treaty of 1854, were abrogated by the United States through the enactment of 25 U. S. C. secs. 891-902, and that, such rights being valuable property rights, their loss is compensable by the federal government.

The State of Wisconsin, through its supreme court and law enforcement officers, was merely carrying out the Congressional mandate in applying its fish and game laws to the Menominess, *State v. Sanapaw, supra,* and is in no way liable for the loss suffered by the Menomineee people, as intimated by the court below.

IV. CONCLUSION.

The Congress of the United States has plenary power over the affairs of the Indians and Indian Tribes. By the express terms of the Termination Act the United States Congress has abolished the Menominee Indian Reservation, and has ended the Federal trusteeship over the Menominee Indian people. Accordingly, the reservation area and the enrolled members of what was formerly the Menominee Indian Tribe are now fully assimilated under the laws of the State of Wisconsin.

Section 899 of the Termination Act is clear and unambiguous. By its express terms, the laws of Wisconsin, without exception, apply to the members of the tribe in the same manner and to the same extent as they apply to other citizens within the state. Conflicting views concerning the effect of the Act (H. R. 2828) upon hunting and fishing by the Menominees were presented at the joint hearing of the commitsees of Congress. Thus, advised and with an alternative bill before it which expressly reserved hunting and fishing privileges (H. R. 7135), Congress enacted the bill which did not reserve such privileges. And, when Congress intends that hunting or fishing privileges enjoyed by Indians be preserved when state jurisdiction over Indians is enlarged by federal act, it has expressed so provided. In P. L. 280 (67 Stat. 588), supra, hunting and fishing rights were expressly exempted. In the Klamath Termination Act, water and fishing rights and privileges of the Indians, under Federal treaty, were expressly preserved (68 Stat. 718, 722; 25 U. S. C., sec. 564m). Thus Congress is not unmindful of the matter, and indeed the issue was specifically raised at the hearings on the Menominee bills.

The plain intent of Congress to abrogate these rights is not overcome by the contemporaneous passage of Public Law 280, nor by oblique reference to this law is an unrelated portion of the termination plan.

The rights so abrogated by the United States are valuable property rights arising from treaty, and their loss is compensable by the federal government.

The State of Wisconsin, *amicus curiae*, respectfully urges the Court to reverse the decision of the Court of Claims herein, insofar as it holds that the exclusive treaty rights of the claimants, the Menominee Tribe of Indians, et al., have not been abrogated by the Menominee Termination Act, and that the United States is not liable therefor.

Accordingly, it is urged that the judgment granting the government's motion for summary judgment and dismissing the petition of the plaintiffs be vacated and set aside.

Respectfully submitted,

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